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*Costco Wholesale Corporation*

## UNITED STATES DISTRICT COURT

### DISTRICT OF NEVADA

12 BEATRIZ ESPINOZA,

13 Plaintiff,

14 v.

15 COSTCO WHOLESALE CORPORATION  
 16 dba COSTCO WHOLESALE #685; a  
 17 Foreign Corporation; DOES I through X,  
 18 inclusive; and ROE CORPORATIONS I  
 through X, inclusive,

19 Defendants.

20 CASE NO. 2:24-cv-01425-APG-EJY

### **FIRST AMENDED ~~PROPOSED~~ STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

21 WHEREAS, Plaintiff BEATRIZ ESPINOZA (hereinafter "Plaintiff") seeks the  
 22 discovery of possibly confidential, proprietary and trade secret protected documents and  
 23 information from COSTCO WHOLESALE CORPORATION (hereinafter "Costco") regarding  
 24 Costco's policies, practices and procedures ("Confidential Information");

25 WHEREAS, Costco requires protection against the unrestricted disclosure and use of  
 26 such Confidential Information as internal propriety information, including, but not limited to,  
 27 *Defendant's employee manuals, policy manuals, loss prevention, employee training, video*  
*cameras, employee records and other club member information;* and

1           WHEREAS, the parties agree that good cause exists for the entry of the foregoing Agreed  
2 Confidentiality and Protective Order.

3           THEREFORE, it is agreed that:

4           1.       This Confidentiality Agreement shall govern all Confidential Information  
5 revealed in the above-referenced lawsuit, whether the Confidential Information is contained in  
6 documents produced, answers to interrogatories, deposition testimony, and/or any other oral or  
7 written responses to discovery conducted in this matter, whether it is revealed by Costco or any  
8 other party or third-party.

9  
10          2.       A party shall indicate that information is Confidential Information hereunder by  
11 producing a copy bearing a stamp or label signifying that it is "Confidential." In the case of  
12 testimony or any other oral information, it shall be sufficient for a party to state that the  
13 Confidential Information is confidential pursuant to this Agreement at the time such testimony  
14 or oral information is given or conveyed. Alternatively, a party may designate testimony as  
15 Confidential hereunder by marking the transcript containing Confidential Information with the  
16 word "Confidential" within thirty days (30) days of receipt of the transcript of said testimony. In  
17 the event any party creates a computer database, disk, compact disk, drive, digital or other  
18 electronic record containing Confidential Information, the party creating such an electronic  
19 record shall mark the case or envelope containing the material with the word "Confidential."  
20 Documents printed from such electronic media shall be marked the same as documents originally  
21 produced on paper and shall be accorded the same status of confidentiality as the underlying  
22 Confidential Information from which they are made and shall be subject to all of the terms of  
23 this Agreement.

24           ///

1           3. Confidential Information obtained by or produced to any party shall be held in  
2 confidence and revealed only to the named parties in the above-captioned matter, counsel of  
3 record, paralegals and secretarial employees under counsels' direct supervision, the parties  
4 themselves for purposes of deposition, the Court and court staff, court reporters, and such  
5 persons as are employed by the parties or their counsel to act as experts, investigators or  
6 consultants in this case. All Confidential Information must be maintained in counsels' offices,  
7 with the exception of documents and/or information provided to individuals employed to act as  
8 experts in this case. The parties shall take all steps reasonably necessary to see that no person  
9 shall use, disclose, copy or record Confidential Information for any purpose other than the  
10 preparation or conduct of this case.

13           4. All Confidential Information shall be used solely for the purpose of maintaining  
14 the present litigation, including any appeals or retrials, and not for any other purpose(s) or any  
15 other litigation. Under no circumstances shall Confidential Information be disclosed to anyone  
16 other than the persons designated above, and the parties shall not disclose such Confidential  
17 Information to any undesignated person during or after the termination of this litigation.  
18 Moreover, no Confidential Information shall be disclosed to a competitor (direct or indirect) of  
19 Costco, whether for the purposes of this litigation or otherwise.

21           5. Before any Confidential Information is disseminated or disclosed to any of the  
22 above-designated persons, such person shall (a) read this Confidentiality Agreement in its  
23 entirety; and, (b) agree to all provisions of this Confidentiality Agreement.

25           6. All depositions, pleadings, reports, notes, lists, memoranda, indices,  
26 compilations, electronically stored information, and records in which Confidential Information  
27 is discussed, documented or referred to shall themselves be deemed Confidential Information

1 and shall be subject to this Agreement. Should a party use any Confidential Information in any  
2 pleading filed with the Court, that party shall, at the time of filing, request that the court impound  
3 the specific portion of the pleading containing the Confidential Information.

4  
5       7. Upon final termination of this litigation, each person subject to this  
6 Confidentiality Agreement shall return all Confidential Information to counsel for Costco within  
7 thirty (30) days after the final disposition of this matter. Documents that contain notations of  
8 counsel may be destroyed rather than returned, but it shall be the responsibility of counsel to  
9 ensure the documents are destroyed.

10  
11      8. The disclosure of any Confidential Information by Costco shall not serve to waive  
12 any of the protections provided by this Confidentiality Agreement with respect to any other  
13 Confidential Information.

14  
15      9. No person who has received Confidential Information shall seek to vacate or  
16 otherwise modify this Agreement at any time. This Agreement shall not be abrogated, modified,  
17 amended, or enlarged except by stipulation and agreement of the parties or by the Court with  
18 notice given to each of the parties.

19  
20      10. Nothing in this Confidentiality Agreement shall restrict a party's right to object  
21 to the disclosure of documents or information otherwise objectionable, protected or privileged  
22 pursuant to the Federal Rules of Civil Procedure, applicable law, other than confidentiality, or  
23 to seek an agreement preventing disclosure or limiting the discovery of Confidential Information,  
24 or to seek an agreement preventing disclosure or limiting the discovery of information or material  
25 that is objectionable on other grounds, regardless of whether or not such material may also  
26 constitute Confidential Information pursuant to this Confidentiality Agreement. These parties  
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1 shall take reasonable steps necessary to have the Court enter an order consistent with the terms  
2 of this Confidentiality Agreement.

3       11. Nothing contained herein shall restrict the presentation of any evidence, including  
4 Confidential Information, to a jury or the Court at trial. However, such presentation shall not  
5 constitute a waiver of any restrictions provided for in this Order and the parties agree to take  
6 reasonable steps to maintain the confidentiality of any Confidential Information at trial of this  
7 matter in such a manner and until such time as the Court may direct and/or as the parties may  
8 otherwise agree. Before any such presentation of Confidential Information, the receiving party  
9 shall provide Costco with appropriate notice so that Costco may have the opportunity to lodge  
10 appropriate objections or seek the Court's direction to prevent disclosure of the Confidential  
11 Information and/or move for appropriate confidential treatment of the materials at trial.

12       12. The terms of this Agreement shall remain fully active until released by written  
13 consent of Costco. The Court shall retain jurisdiction over the parties, this Agreement, and  
14 recipients of confidential documents, materials, and/or information for the sole purpose of  
15 enforcing this Agreement and adjudicating claims of breaches thereof and administering  
16 damages and other remedies related thereto. The provisions of this Agreement shall continue to  
17 be binding as to the confidential documents, materials, and/or information produced pursuant to  
18 it.

19       13. There may be large volumes of materials in discovery in this matter, including  
20 collections of materials in the form of paper or electronic documents, increasing the likelihood  
21 that information protected from discovery by certain privileges or immunities, or Confidential  
22 Material not marked as such, may be produced inadvertently. Therefore, the following  
23 provisions shall apply to the production of information in this case:

1           A. Inadvertent production of documents subject to the work-product doctrine, the  
2 attorney-client privilege, the trade secret and proprietary business information privilege, or other  
3 legal privilege, rule or doctrine protecting information from discovery shall not constitute a  
4 waiver of the immunity or privilege either for the inadvertently produced document or its subject  
5 matter (so-called “subject matter waiver”), provided that the producing party shall notify the  
6 receiving party in writing of such inadvertent production promptly upon becoming aware of it.  
7

8           B. If reasonably prompt notification is made, such inadvertently produced  
9 documents and all copies thereof, as well as all notes or other work product reflecting the  
10 contents of such materials, shall be returned to the producing party or destroyed, and such  
11 returned material shall be deleted from any litigation-support file or database. No use shall be  
12 made of such inadvertently produced documents during discovery or at trial nor shall they be  
13 disclosed to anyone who was not given access to them before the request to return and destroy  
14 them.

15           C. If any party contends that the notification of inadvertent production was not  
16 “reasonably prompt,” it shall notify the producing party in writing, and will make no further use  
17 of such documents pending a resolution of their status by the Court. It shall be the burden of the  
18 producing party to move for a protective order regarding the inadvertent production, and to  
19 demonstrate both that the production was inadvertent, that reasonable diligence was exercised to  
20 identify the inadvertently produced information, and that notification was made with reasonable  
21 promptness after discovering the inadvertent production.

22           D. The party returning or destroying such documents may move the Court for an  
23 order compelling production of the material, but such motion shall not assert the fact or  
24 circumstances of the inadvertent production as a ground for entering such an order.

25           E. Inadvertent failure to designate produced materials as “CONFIDENTIAL”  
26 pursuant to the terms of Section I above shall not constitute a waiver of the right to designate  
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1 such materials as Confidential provided that the producing party shall notify the receiving party  
2 of such inadvertent failure to designate promptly upon becoming aware of it.  
3

4 F. If reasonable notification is made of such failure to designate, such inadvertently  
5 non-designated documents and all copies thereof, shall be returned to the producing party or  
6 destroyed and such material shall be deleted from any litigation-support file or database. No use  
7 shall be made of such non-designated documents during discovery or at trial without the  
8 appropriate "CONFIDENTIAL" markings, nor shall they be disclosed to anyone who was not  
9 given access to them before the request to return or destroy.

10 G. Any inadvertently produced document or documents provided to the Court  
11 pursuant to this Section IV shall not be considered a "court record" as defined in Nev. S.C.R. 2  
12 (2010).

13 14. The burden of proving the confidential nature of designated information is on the  
14 producing party. Prior to designating any material as Confidential and subject to this Protective  
15 Order, the producing party must make a bona fide determination that the material is, in fact,  
16 confidential as defined above, the dissemination of which would significantly damage the  
17 producing party's competitive position or impact the privacy rights of third-parties.

18 15. In the event counsel for any party, in good faith, disputes the designation of any  
19 document as Confidential, he or she shall notify counsel for the producing party in writing. The  
20 producing party shall seasonably apply to the Court for a determination that the document is or  
21 is not protected pursuant to this Protective Order. Until a final determination by the Court, any  
22 disputed document will be treated as Confidential Material pursuant to this Protective Order.  
23 Nothing in this Protective Order shall be construed to alter or shift the burdens of production and  
24 persuasion ("the burden of proof") as they apply to the assertion of privileges or exemptions  
25 from public disclosure or any claim or affirmative defense in this matter.

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16. This Stipulation and Order may be executed in one or more counterparts, and facsimile signatures are deemed to constitute originals for purposes of this Stipulation.

DATED this 21<sup>st</sup> day of January, 2025.

DATED this 21<sup>st</sup> day of January, 202.

## OLSON CANNON & GORMLEY

## THE 702 FIRM INJURY ATTORNEYS

*/s/ Michael A. Federico, Esq.*

/s/ Brandon A. Born, Esq.

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IT IS SO ORDERED this 21st day of January, 2025.

Elyna J. Zouchah  
UNITED STATES MAGISTRATE JUDGE

Submitted by:

# OLSON CANNON & GORMLEY

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